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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,350	08/30/2006	Gay Joyce Cornelius	102792-599 (11589P1 US)	9754
27389	7590	04/17/2009		
NORRIS, MCLAUGHLIN & MARCUS			EXAMINER	
875 THIRD AVE			ASD/ODL, MOHAMMAD REZA	
18TH FLOOR				
NEW YORK, NY 10022			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			04/17/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/597,350

**Applicant(s)**

CORNELIUS ET AL.

**Examiner**

MOHAMMAD R. ASDJODI

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

***The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.***

Claims 1, 3-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silvester et al. (US 6,150,318).

Regarding claims 1, and 3-19, Silvester et al. teach a cleaning composition for application on a soiled substrate (1: 66, 5: 63) comprising: 20-50% surfactants such as n-alkyl pyrrolidones and n-octyl pyrrolidone; [3: 67, 5: 62, 1: 46-47], a plurality of hydrocarbons such as pentane, xylene, and paraffin by the amount of 0.5-30%; [13: 27-32], water by the amount of 25-55%; [5: 47], electrolytes such as sodium citrate or bicarbonate; [8: 23-25], and bleaching agent; [6: 43-45], wherein the composition is packaged as household cleaning product and could exist in single or multiple phases; [6: 58-63, 12: 63-64]. This composition is contained and applied using different methods including spaying it on the surface to be treated; [3: 25-30, claim 6].

With respect to equilibrium between the components of the chemical system, and resulting effects (Marangoni) due to density, vapor pressure and surface tension differences, change in concentration or weight percentage of components of equilibrium (e.g. phase diagram) is an expected occurrence with predictable consequences. Under some circumstances, however, such changes may impart patentability to a composition if the particular claimed range, or percent, produce a new and unexpected result which is different in kind and not merely in degree from the result of prior art. A prima facie case of obviousness may be rebutted, however, where the results of the optimizing

variable, which is known to be result-effective, are unexpectedly good, *In re Boesch and Slaney*, 205 USPQ 215, [MPEP 2441.05]. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to optimize the amount of ingredients of an equilibrium system with the motivation of optimizing the composition for a specific cleaning purpose or specific surface to be cleaned.

### ***Response to Arguments***

Applicant's arguments filed 02/18/09 have been fully considered but they are not persuasive. Because:

A- In response to applicant's argument that: "presence of a pressurized aerosol constituent (=container) would be essential to Silvester's composition and this is not the case for the composition of instant application": it is noted that, as in claim 1 and first paragraph of page 8 of specification the use, or application, of instant composition is carried out via spray can also. This is one similarity of prior art with the instant application, and more importantly it should be noted that Silvester et al.'s composition comprises identical ingredients as instant claims.

B- According to disclosure of instant application (pg.6: 28-34, pg.7: 1-5): "it is thought that the Marangoni effect may give rise to cleaning benefits exhibited by compositions of the invention. Compositions exhibiting the Marangoni effect may exhibit a tendency to "creep" into small spaces. Evaporation of a compound may lead to changes in surface tension and to surface motility, causing the composition to move, for example into and then out of a crack, drawing soils with it". The scientific language

of disclosure is not positively leading to a convincing property which is essentially, as allegedly claimed, related to a natural physical phenomenon (an inherent property of a system) such as Maragony effect.

C- To date, there has been no display of evidence to elucidate differences between the two inventions. It is noted that arguments of counsel can not take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. M. Reza Asdjodi whose telephone number is (571)270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Reza Asdjodi /  
Examiner, Art Unit 1796  
04/14/09

/David Wu/

Supervisory Patent Examiner, Art Unit 1796